

## **REMARKS**

### ***Specification***

Applicant has amended the specification to update the status of the parent application.

Entry is requested.

### ***Terminal Disclaimer***

The Examiner states that the “terminal disclaimer filed on December 29<sup>th</sup>, 2006 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of October 14, 2003 has been reviewed and accepted.” This Terminal Disclaimer relates to United States Patent No. 6,662,802. Applicant notes that the ‘802 patent expires on June 21, 2021 (Applicant does not believe that the ‘802 patent itself is subject to a Terminal Disclaimer). Therefore, Applicant is unsure as to why the Examiner asserts an “October 14, 2003” date, and requests clarification as to the term of any patent granted on this application.

### ***Information Disclosure Statement***

Applicant timely filed an Information Disclosure Statement on December 3, 2003 (received by the Patent Office on December 8, 2003 according to PAIR). In the Office Action dated October 2, 2006, the Examiner returned the initialed sheets indicating the references were considered. Applicant notes that sheet 2 of 2 of form PTO-1449 included with the Office Action dated October 2, 2006 was not initialed. Applicant requests a copy of the initialed sheet 2 of 2 of form PTO-1449 included with the Office Action dated October 2, 2006.

### *Allowable Subject Matter*

Applicant notes with appreciation that claims 4-7 and 11 were objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form.

### *Claim Rejections - 35 U.S.C. §102(e)*

Claims 1-3, 8-10 and 12 were rejected under 35 U.S.C. §102 as allegedly being anticipated by GB 2252515 to Zwaan et al. (the Examiner has withdrawn the allowability of claim 12 in view of Zwaan). Reconsideration and withdrawal of the rejection is requested.

The Examiner states in the Office Action that Applicant's previous arguments were persuasive with regard to Nakamura. In that Office Action, the Examiner cited Nakamura which disclosed an arrangement having a direct supply of water to it which Applicant argued against. However, the Examiner has now cited Zwaan, which also has a direct supply of water to the element from a source outside the conduit, in the present Office Action.

Zwaan discloses a *humidifying* apparatus for use in a breathing circuit. As a result, the Gore-Tex® envelope 30 includes a "water entry tube 45", page 6, line 5, to supply the apparatus with liquid water from an external source. In contrast, claim 1 recites that the invention has "no direct supply of water or fluid to said hydrophilic layer from outside said conduit". Applicant submits that Zwaan does not anticipate claim 1, because it has an external supply of water which it delivers to the breathable membrane in order to humidify the gases passing over it.

If the Examiner suggests that the water supply of Zwaan is supplied from *inside* the conduit to the hydrophilic layer, Applicant submit that the water supply of Zwaan has an entry point into the apparatus 45 which is clearly exterior to the apparatus. The inescapable conclusion

from this is that the supply itself is external from the humidifier apparatus of Zwaan. On page 10, lines 16-17 of Zwaan, reference is made to United States Patent No. 4,708,831 regarding the supply of water to the water compartment 30.

Applicant submits that the claims are directed to the *supply* being external, rather than stipulating the precise location of delivery of fluid to the layer as being external to the layer. This is consistent with the context of the disclosure, and is the only sensible interpretation of the claim language.

The claimed invention is directed to dealing with excess condensed water vapour which forms within the conduit, while Zwaan is concerned with *humidification* of the gases passing through a conduit. The claimed invention aims to deal with excess water, not introduce more water like Zwaan. Applicant submits that the humidification element of Zwaan is an arrangement excluded by the ordinary reasonable interpretation of the language of claim 1.

Therefore, Applicant submits that claim 1 is not rendered obvious by Zwaan. Reconsideration and allowance is requested.

Claims 2, 3, 8-10 and 12 are dependent upon claim 1 which Applicant submits is allowable. Reconsideration and allowance of claims 2, 3, 8-10 and 12 is requested.

In addition, with regard to claim 3, the Examiner appears to misinterpret what is meant by "heating means lies freely in said conduit to settle over at least some of its length at low points in said conduit where condensed water vapour may collect". The Oxford English dictionary defines:

1. "lie" as "be in or assume a horizontal or resting position on a supporting surface".

2. "freely" as "without restriction or interference".
3. "settle" is defined as "gradually sink down under its own weight".

Putting all these words together clearly shows that the claim is limited to arrangements where the elongate element is free to move within the conduit and come to rest (at least over some of its length) at the lowest point of the conduit where gravity will cause any condensate to pool.

In contrast, the humidifying apparatus of Zwaan discloses heater 50 located in water compartment 30 which is supported within body 1 by thin elements 10, see page 4, lines 11-14. Applicant submits that this is not "heating means lies freely in said conduit to settle over at least some of its length at low points in said conduit where condensed water vapour may collect" as specified in claim 3.

The claimed invention is directed to "a conduit for breathing circuit". This is a term of art which is well understood by one of ordinary skill in the relevant field. Applicant assume that the Examiner is not suggesting that the Gore-Tex® envelope 30 of Zwaan (which has no "outlets" in the ordinary sense of that term used in a breathing) would be suitable for conveying breathing gases to a patient.

Applicant of course concede that the Gore-Tex® envelope of Zwaan does have pores which might constitute an outlet of sorts. However, a person of ordinary skill in the art would have no doubt that the Gore-Tex® envelope of Zwaan (which is filled with liquid water) cannot read on a claim to a "conduit for a breathing circuit". If the Examiner is unconvinced, Applicant requests that the Examiner provide a constructive suggestion as to how a closed Gore-Tex®

envelope filled with water could be better distinguished from the well understood apparatus of "a conduit for a breathing circuit".

Applicant submits that the application is in order for allowance.

Should the Examiner have any questions regarding this Amendment, the Examiner is  
5 invited to contact one of the undersigned attorneys at (312) 704-1890.

Respectfully submitted,

10 Dated:

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By:

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